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Attorneys for Plaintiffs
SHIRLEY CHAPMAN dba
CHAPMAN ILLUSTRATION & DESIGN and
SMART DEGRADABLE AMERICAS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY CHAPMAN dba
CHAPMAN ILLUSTRATION & DESIGN and
SMART DEGRADABLE AMERICAS INC.,

Plaintiffs,

v.

AGRI-PACKING SUPPLY, INC.,

Defendant.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

(DEMAND FOR JURY TRIAL)

Plaintiffs, SHIRLEY CHAPMAN dba CHAPMAN ILLUSTRATION & DESIGN
("CHAPMAN") and SMART DEGRADABLE AMERICAS INC. ("SMART DEGRADABLE")
(collectively "Plaintiffs"), by and through their attorneys, as and for their Complaint against Defendant
AGRI-PACKING SUPPLY, INC. ("AGRI-PACKING" or "Defendant"), allege as follows:

JURISDICTION

1
2 1. This Court has original and exclusive subject matter jurisdiction of this action pursuant to
3 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act of 1976,
4 17 U.S.C. §§ 101, et seq.

5 2. This Court has personal jurisdiction over the Defendant, in that the Defendant is (a) doing
6 business in California and in this District, and (b) has committed acts of copyright infringement within
7 California and in this District.

VENUE

8
9 3. Venue is proper under 28 U.S.C. § 1391(b)(2) because the acts, transactions and injuries
10 complained of occurred in substantial part in this District, and because Defendant has engaged in
11 business in this District; and pursuant to 28 U.S.C. § 1400(a) because an action relating to copyright
12 may be instituted in any district in which the defendant or its agent resides or may be found, and
13 Plaintiffs are informed and believe Defendant or its agent can be found in this District.

INTRADISTRICT ASSIGNMENT

14
15 4. This action asserts claims for copyright infringement. It is an Intellectual Property
16 Action and may be assigned on a district-wide basis pursuant to Civil L. R. 3-2(c).

PARTIES

17
18 5. CHAPMAN is an individual having a place of business at 20 Espada Court, Fremont, CA
19 94539, and doing business as Chapman Illustration & Design under the laws of the State of California.
20 CHAPMAN is engaged in, among other things, the creation of original artwork, including drawings,
21 paintings and illustrations.

22 6. SMART DEGRADABLE is a corporation organized and operating under the laws of
23 Nevada, having a place of business at 2474 N. Renn Avenue, Fresno, CA 93727. SMART
24 DEGRADABLE is in the business of, among other things, packaging and selling of fresh fruit.

25 7. Upon information and belief, Defendant AGRI-PACKING is an Arizona corporation,
26 with a principal place of business at 1350 N. Industrial Park, Nogales, AZ 85621. AGRI-PACKING
27 does business in and affecting interstate commerce, including in this District.

COUNT I (COPYRIGHT INFRINGEMENT)

8. Plaintiffs refer to and incorporate herein by this reference paragraphs 1 through 7, above, as though fully set forth.

9. CHAPMAN has created an original work of the visual arts which is attached hereto as Exhibit A and incorporated herein by this reference (“*Grapes and Vista*”), and CHAPMAN is the sole author of the work.

10. CHAPMAN has complied in all respects with the Copyright Act and all laws governing copyrights, and has secured a certificate of registration from the Register of Copyrights numbered VA 1-892-504 for *Grapes and Vista*, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein by this reference (“Copyright”). The copyright is valid and subsisting. CHAPMAN is the sole owner of the Copyright.

11. SMART DEGRADABLE has been granted and is the holder of an exclusive license from CHAPMAN for use of *Grapes and Vista* on packaging for fresh grapes.

12. Defendant has infringed the Copyright in *Grapes and Vista*, and the exclusive license to SMART DEGRADABLE, by reproducing, distributing, offering for sale, importing and selling in the United States and in this jurisdiction copies of the work which have been reproduced on bags for fresh grapes (“the Infringing Art”). Photographs of two versions of the Infringing Art are attached hereto as Exhibit C and incorporated herein by this reference. Defendant had access to the SMART DEGRADABLE bags containing the *Grapes and Vista* artwork, which had been in wide distribution throughout the United States and outside of the United States, and the Infringing Art is substantially similar to the work that is the subject of the Copyright. Defendant has additionally infringed the Copyright by making an unauthorized derivative work of *Grapes and Vista*, in the form of the Infringing Art. On information and belief, Defendant’s acts of infringement of the Copyright numbers in the millions of bags including the Infringing Art, and are continuing.

13. Upon information and belief, Defendant’s past, present and continuing infringement is being performed with knowledge that the artwork of *Grapes and Vista* was being used and sold on bags

1 from SMART DEGRADABLE, and therefore with actual knowledge of rights in the artwork by at least
2 SMART DEGRADABLE.

3 14. Plaintiffs have been and are being irreparably harmed by Defendant's conduct as alleged,
4 entitling Plaintiffs to a preliminary as well as permanent injunction pursuant to 17 U.S.C. § 502.

5 15. As a result of Defendant's infringing actions, SMART DEGRADABLE has suffered
6 actual damages by virtue of, inter alia, lost sales of bags containing *Grapes and Vista* for which SMART
7 DEGRADABLE is the exclusive licensee. CHAPMAN has suffered actual damages by virtue of, inter
8 alia, violation of her exclusive right to make derivative works, and the damage caused to her exclusive
9 licensee SMART DEGRADABLE. Defendant has been enriched in an amount currently unknown as a
10 result of the infringements. Accordingly, Plaintiffs request that Defendant be required to pay to
11 Plaintiffs such damages as Plaintiffs have sustained as a result of Defendant's infringements, and to
12 account for all additional gains, profits and advantages derived by Defendant from the infringements,
13 and pay same to Plaintiffs.

14 16. Registration of the Copyright was made in accordance and compliance with 17 U.S.C.
15 § 412, entitling Plaintiff's to an election of statutory damages, as well as the ability to recover attorney's
16 fees and costs.

17 **WHEREFORE**, Plaintiffs demand judgment against Defendant as follows:

18 (a) That Defendant, its directors, officers, agents, servants, employees, and all other persons
19 in active concert or privity or in participation with them be preliminarily and permanently enjoined from
20 infringing the Copyright and any further use of the Infringing Artwork and any artwork which is
21 substantially similar to *Grapes and Vista*;

22 (b) That Defendant, its directors and officers, agents, servants, employees, and all other
23 persons in active concert or privity or in participation with them be required to deliver up to be
24 impounded during the pendency of this action all copies, including any master(s), of the Infringing
25 Artwork in their possession or under their control, including any and all advertising material displaying
26 the Infringing Artwork for sale;

(c) That Defendant, and its directors and officers, agents, servants, employees, and all other persons in active concert or privity or in participation with them, be required to recall from all distributors, wholesalers, jobbers, and dealers, and all others known to Defendant, wherever located, any originals, copies, facsimiles, or duplicates of any of the Infringing Artwork;

(d) That the United States Customs Service be instructed to inspect shipments sent by or to Defendant in order to determine whether such shipment contains Infringing Artwork or any other artwork which infringes upon the Copyright and to impound the same pending resolution of the matter;

(e) That Defendant be required to pay to Plaintiffs actual damages pursuant to 17 U.S.C. § 504(b) as have been sustained as a result of Defendant's infringements, and to account for all gains, profits and advantages derived by Defendant from the infringement, or in lieu thereof, statutory damages, as well as increasing those damages as having been willful infringements, as the Court shall deem proper within the provisions of the Copyright Act;

(f) That Defendant be required to pay statutory damages pursuant to 17 U.S.C. § 504(c), including willful infringement under 17 U.S.C. § 504(c)(2);

(g) That Defendant pay to Plaintiffs the costs of this action including reasonable attorney's fees pursuant to 17 U.S.C. § 505; and

(h) That Plaintiffs have such other and further relief as is just.

Respectfully submitted,

SEYFARTH SHAW LLP

DATED: June 17, 2014

By: /s/ Kenneth L. Wilton
Kenneth L. Wilton
Attorneys for Plaintiffs
SHIRLEY CHAPMAN dba
CHAPMAN ILLUSTRATION & DESIGN and
SMART DEGRADABLE AMERICAS INC.

DEMAND FOR JURY TRIAL

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure and Civil L.R. 3-6(a),
Plaintiffs Shirley Chapman dba Chapman Illustration & Design and Smart Degradable Americas Inc.
demand a trial by jury on all issues triable by a jury.

SEYFARTH SHAW LLP

DATED: June 17, 2014

By: /s/ Kenneth L. Wilton
Kenneth L. Wilton
Attorneys for Plaintiffs
SHIRLEY CHAPMAN dba
CHAPMAN ILLUSTRATION & DESIGN and
SMART DEGRADABLE AMERICAS INC.

EXHIBIT A

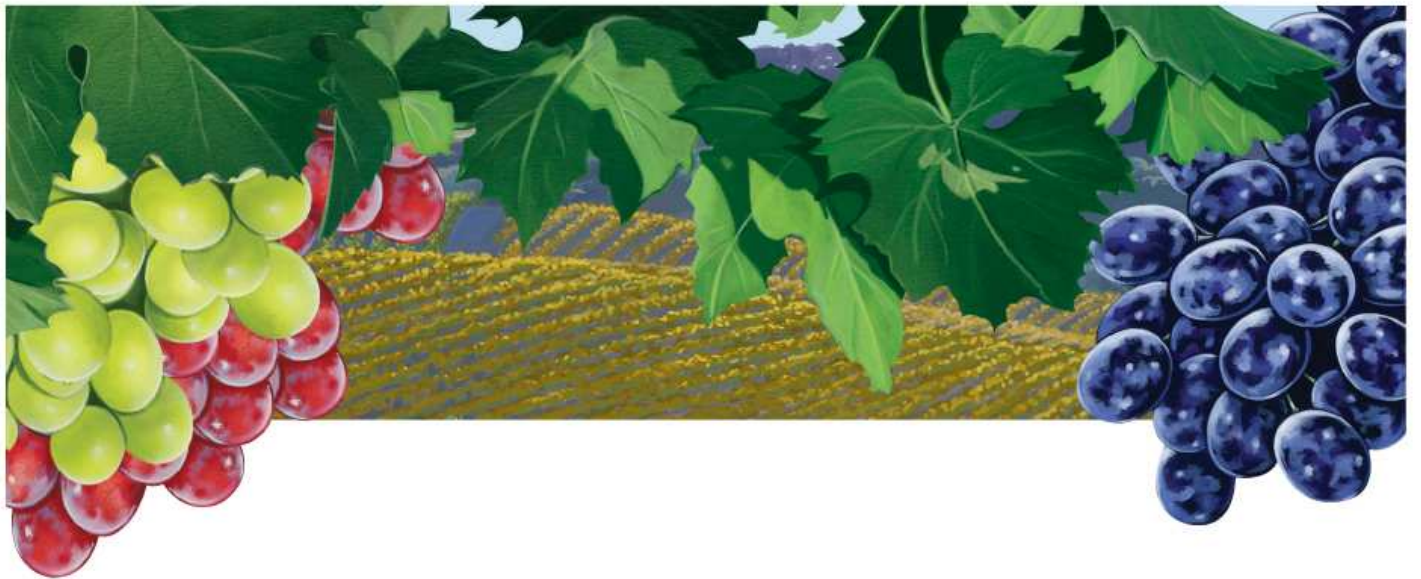


EXHIBIT B



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-892-504

**Effective date of
registration:**

February 14, 2014

Title

Title of Work: Grapes and Vista

Completion/Publication

Year of Completion: 2011

Date of 1st Publication: June 1, 2011

Nation of 1st Publication: United States

Author

■ **Author:** Shirley Chapman

Author Created: 2-D artwork

Citizen of: United States

Domiciled in: United States

Year Born: 1953

Copyright claimant

Copyright Claimant: Shirley Chapman

20 Espada Court, Fremont, CA, 94539, United States

Rights and Permissions

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Certification

Name: Matthew A. Werber

Date: February 14, 2014

EXHIBIT C

